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From:

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To:

Cc:

Subject: RE: 6701 Penalty Calculation

I'm answering your question relating to asserting the section 6701 penalty when there are two documents that could potentially give rise to the penalty. If you have other questions, let us know.

As you point out, section 6701(a) provides that any person who meets the requirements of the section "pay a penalty with respect to each such document in the amount determined under subsection (b)." The "respect to each document" language plainly reads as though a penalty may be asserted for each document prepared by a person who meets the requirements under subsection (a).

Section 6701(b)(3), however, provides:

ONLY 1 PENALTY PER PERSON PER PERIOD.- If any person is subject to a penalty under subsection (a) with respect to any document relating to any taxpayer for any taxable period (or where there is no taxable period, any taxable event), such person shall not be subject to a penalty under subsection (a) with respect to any other document relating to such taxpayer for such taxable period (or event).

Therefore, if two documents are prepared by the same person and relate to the same period, there is only one section 6701 penalty asserted against that person. See generally Mullikin v. Commissioner, 952 F. 2d 920, 930 (6th Cir. 1991). Whether the two documents in your case were prepared by the same person is unclear. If each document was prepared by a separate person, then the section 6701 penalty may be asserted against both persons, assuming all other requirements are met.